

## Securities and Exchange Commission

## § 230.602

subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminary or permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

[54 FR 11374, Mar. 20, 1989]

### § 230.508 Insignificant deviations from a term, condition or requirement of Regulation D.

(a) A failure to comply with a term, condition or requirement of § 230.504, § 230.505 or § 230.506 will not result in the loss of the exemption from the requirements of section 5 of the Act for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 230.504, § 230.505 or § 230.506.

(b) A transaction made in reliance on § 230.504, § 230.505 or § 230.506 shall comply with all applicable terms, conditions and requirements of Regulation D. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

[54 FR 11374, Mar. 20, 1989, as amended at 57 FR 36473, Aug. 13, 1992]

### REGULATION E—EXEMPTION FOR SECURITIES OF SMALL BUSINESS INVESTMENT COMPANIES

**AUTHORITY:** Sections 230.601 to 230.610a issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s.

**SOURCE:** Sections 230.601 to 230.610a appear at 23 FR 10484, Dec. 30, 1958, unless otherwise noted.

**CROSS REFERENCE:** For regulations of Small Business Administration under the Small Business Investment Act of 1958, see 13 CFR, Chapter I.

### § 230.601 Definitions of terms used in §§ 230.601 to 230.610a.

As used in §§ 230.601 to 230.610a, the following terms shall have the meaning indicated:

**Act.** The term *Act* refers to the Securities Act of 1933 unless specifically stated otherwise.

**Affiliate.** An *affiliate* of an issuer is a person controlling, controlled by or under common control with such issuer. An individual who controls an issuer is also an affiliate of such issuer.

**Notification.** The term *notification* means the notification required by § 230.604.

**Offering Circular.** The term *offering circular* means the offering circular required by § 230.605.

**State.** A *State* is any State, Territory or insular possession of the United States, or the District of Columbia.

**Underwriter.** The term *underwriter* shall have the meaning given in section 2(11) of the Act.

### § 230.602 Securities exempted.

(a) Except as hereinafter provided in this rule, securities issued by any small business investment company which is registered under the Investment Company Act of 1940, or any closed-end investment company that has elected to be regulated as a business development company under the Investment Company Act of 1940 or has notified the Commission that it intends to elect to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940, will be exempt from registration under the Securities Act of